SUPREME COURT OF QUEENSLAND

CITATION:	*R v Renata; Ex parte Attorney-General (Qld)* [2018] QCA 356
PARTIES:	**R** **v** **RENATA, Armstrong** (respondent) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	CA No 266 of 2017 SC No 1663 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Appeal by Attorney-General (Qld)
ORIGINATING COURT:	Supreme Court at Brisbane – Date of Sentence: 13 October 2017 (Bowskill J)
DELIVERED ON:	18 December 2018
DELIVERED AT:	Brisbane
HEARING DATE:	12 September 2018
JUDGES:	Gotterson and Philippides JJA and Henry J
ORDERS:	**1. Allow the appeal.** **2. Set aside the sentence imposed at first instance and in lieu thereof, order that the respondent be imprisoned for a term of nine years and six months.** **3. Further order that the respondent must not be released from imprisonment until he has served 80 per cent of this term.** **4. Declare that the pre-sentence custody from 3 January 2016 to 12 October 2017 is time served under this sentence.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the respondent pleaded guilty to one count of unlawful striking causing death – where the respondent delivered an unprovoked and very forceful blow to the deceased's jaw with a clenched first –where the deceased had his arms by his side – where the blow was delivered from out of the deceased's sight – where the respondent was sentenced to seven years imprisonment –

where it was ordered, pursuant to s 314A(5) of the *Criminal Code* (Qld), that the respondent must not be released until he has served 80 per cent of that term – whether the respondent's sentence is manifestly inadequate

Criminal Code (Qld), s 314A
Safe Night Out Legislation Amendment Act 2014 (Qld), s 14

Hili v The Queen (2010) 242 CLR 520; [2010] HCA 45, cited
R v George; Ex parte Attorney-General (Qld) [2004] QCA 450, distinguished
R v Katia; Ex parte Attorney-General (Qld) [2006] QCA 300, distinguished
R v Mayot (Unreported, Supreme Court of Queensland, Holmes CJ, 6 March 2017), distinguished
R v Skondin [2015] QCA 138, distinguished

COUNSEL: C Heaton QC for the appellant
J J Allen QC for the respondent

SOLICITORS: Director of Public Prosecutions (Queensland) for the appellant
Legal Aid Queensland for the respondent

[1] **GOTTERSON JA:** The respondent, Armstrong Renata, was charged on a single-count indictment of an offence against s 314A of the *Criminal Code* (Qld). The count alleged that on 5 January 2016 at Fortitude Valley, he unlawfully struck Cole Edward Miller ("the deceased") and caused his death.

[2] The respondent pleaded guilty to the charge and was convicted in the Supreme Court at Brisbane on 26 June 2017. A sentence hearing ensued on 13 October 2017. At the conclusion of it, the respondent was sentenced to seven years imprisonment. A period of some 649 days pre-sentence custody was declared to be time served under the sentence. In compliance with s 314A(5), it was ordered that the respondent must not be released from imprisonment until he has served 80 per cent of the term.

[3] On 10 November 2017, the Attorney-General of Queensland, in reliance upon s 669A of the *Code*, filed a notice of appeal to this Court against the sentence.[1]

The offence provision

[4] The offending occurred after the enactment in 2014 of s 314A.[2] It came into effect on 5 September 2014. Subsection (1) provides:

> "A person who unlawfully strikes another person to the head or neck and causes the death of the other person is guilty of a crime.
>
> Maximum penalty – life imprisonment."

[5] For the purposes of the provision, death is caused by the strike if it is caused directly or indirectly.[3] A strike is the direct application of force to the person by

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1 AB115-116.
2 *Safe Night Out Legislation Amendment Act* 2014 (Qld) s 14.
3 *Criminal Code* (Qld) s 314A(7).

punching or kicking, or by otherwise hitting using any part of the body, with or without the use of a dangerous or offensive weapon or instrument.[4]

[6] For subsection (1), a striking of another person is unlawful unless it is authorised, justified or excused by law.[5] However, the excuse of accident under s 23(1)(b) of the *Code* and lawfulness of the use of force in the face of repetition of insults under s 270 thereof are not available.[6] An assault is not an element of a s 314A offence;[7] hence, provocation is not an available defence.[8] There is no criminal responsibility for an offence against subsection (1) if the act of striking is done as part of a socially acceptable function or activity and is reasonable in the circumstances.[9]

[7] Subsection (5), to which I have referred, requires that if a person convicted of a s 314A(1) offence is sentenced to a term of imprisonment, the court must order that the offender not be released until they have served the lesser of 80 per cent of the term or 15 years. By operation of subsection (6), subsection (5) does not apply if the sentence is for life imprisonment, or is an indefinite sentence, or the court makes either an intensive correction order or an order that the whole or a part of the term of imprisonment be suspended.

The circumstances of the offending

[8] The deceased, who was then 18 years old, went out socialising with a friend, P, on the evening of Saturday, 2 January 2016. They were in Fortitude Valley. In the early hours of the following morning, the two of them were walking through the Chinatown Mall towards Ann Street. They intended to take a taxi home.

[9] They walked past a group of four individuals, one of whom was the respondent, who had been out drinking that night. A member of the respondent's group, M, was acting aggressively. He was trying to engage in physical fights at random with members of the public.

[10] M turned his attention towards P and the deceased as they were walking past. M attempted to goad them to fight. They did not respond or react.

[11] M than walked up to the deceased directly and punched him in the upper body. He and P tried to ignore what had happened but they did back away from M who was physically much larger than either of them.

[12] Another member of the respondent's group, A, tried to stop M and told him to "just leave it". Despite that, M persisted in his aggression towards the deceased and P.

[13] M then approached P and punched him in the upper left chest. P said, "We're not looking for trouble, stop." M then walked towards the deceased who began walking backwards to get away from him. A continued his efforts to dissuade M from behaving aggressively.

[14] At this point, the respondent who is 175 cm old and weighed 96 kg, approached the deceased, 181 cm tall and 80 kg in weight, from behind. He struck the deceased's jaw once with a clenched fist. The respondent was so positioned that the deceased

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4 Ibid.
5 Ibid s 314A(3A).
6 Ibid s 314A(2).
7 Ibid s 314A(3).
8 Ibid see s 268.
9 Ibid s 314A(4).

would not have been able to see him. P said that the respondent used "a lot of force" and the sound was "like a loud pop". M later described to police the respondent's punch as being a "blind shot" and a "king hit".[10]

[15] The deceased fell unconscious, face first, to the ground. He made no movement to break his own fall. He suffered a fatal brain injury, most likely caused directly by the respondent's blow to his head rather than by his head striking the ground.

[16] The respondent and M left the deceased on the ground and walked away. The other two members of their group stayed to tend to the deceased until help arrived. The deceased was taken to Royal Brisbane Hospital. He was assessed as having suffered an unsurvivable brain injury. He was declared dead on the morning of 5 January 2016.

[17] Police located the respondent at his home on the morning of 3 January 2016. He told them that he was going to turn himself in. He participated in a formal interview in which he admitted to having punched the deceased in the head with a closed fist which caused him to fall to the ground unconscious. Initially, the respondent claimed to have witnessed a fight between the deceased and P on the one hand, and M on the other. Later in the interview, he admitted that, in fact, at the time he struck the deceased, the latter's hands were by his sides and that the deceased had not provoked his conduct in any way.

The respondent's personal circumstances and history of offending

[18] The respondent was 21 years old at the time of the offending and 23 years old when he was sentenced. He was born in New Zealand and moved to Australia when he was about 14 years old. He had the support of a loving family.

[19] The respondent completed year 10 at high school. Thereafter, he developed a consistent employment history, working as a forklift driver, an excavator operator and with oxy-acetylene equipment. At the time of sentence, he had a five-year-old son who lived with his ex-partner.

[20] The respondent had a prior history of relevantly minor criminal offending which did, however, evidence a tendency to engage in socially and legally unacceptable behaviour. In 2014, he committed separate offences at night in Surfers Paradise. In February, he committed a public nuisance offence which involved using insulting and offensive language to a female police officer. In June, he offended by punching a male police officer in the face and resisting arrest.

[21] The respondent was held on remand in custody following arrest for the current offending. In September 2017, he was convicted of having obstructed a corrective services officer in April that year. A conviction was recorded but he was not further punished. It appears that the respondent was also wrongly charged with having assaulted two other corrective service officers in April 2017. That led to him being placed in solitary confinement in the prison's maximum security unit for six months.

Sentencing remarks

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10 Exhibit 1: Statement of Facts at [11], [22]: AB52, 53.

[22] The learned sentencing judge referred to the circumstances of the subject offending, the respondent's personal circumstances, his history of offending and the time spent in maximum security. As to the subject offending, her Honour said that she found it difficult to accept a submission made for the respondent that he had wrongly perceived that the deceased was about to strike M when he struck the deceased.

[23] Her Honour noted the respondent's very early plea which she regarded as indicative of his remorse for causing profound and enduring pain to the deceased's parents and family. The deceased's father had spoken of that in a victim impact statement which he read out at the sentence hearing.

[24] Her Honour characterised the offending as "incredibly serious". It was "cowardly, gratuitous and unprovoked". It was important that the sentence she imposed reflect that degree of seriousness in the offending. It was also necessary that the sentence have a deterrent effect.

[25] Turning to the sentencing decisions to which she had been referred during submissions, the learned sentencing judge said that she regarded the sentence of nine years imprisonment that had been imposed in each of *R v George; Ex parte Attorney-General (Qld)*[11] and *R v Skondin*[12], on which the Crown relied, as "higher than, as a matter of principle, is appropriate" for the respondent's case. By way of explanation, her Honour commented that in *Skondin*, the offender, who was tried, was much older and had a far more serious and extensive criminal history; and in *George*, although the offender was of a similar age to the respondent and had pleaded guilty, the violence involved was far more persistent and brazen. In both cases the offender had delivered a punch that killed the victim but the offending occurred before the enactment of s 314A.

[26] The learned sentencing judge also rejected a submission for the respondent that the circumstances in *R v Mayot*[13] are comparable with those in the case before her. In *Mayot*, the offender had caused the death of a victim by a punch to the face. He was charged under s 314A. The sentence he received required him to serve five years in custody before being eligible for parole. Her Honour explained that *Mayot* was not comparable because the offending there occurred in the afternoon in a suburban street in contrast to the respondent's alcohol-fuelled violence in the early hours of the morning. Further, her Honour noted, Holmes CJ, who was the sentencing judge in *Mayot*, proceeded on the basis that the victim had taunted the offender with a racist insult and that the offender had exhibited behavioural problems as a result of racism and bullying. In the course of sentencing, Holmes CJ observed that had she been sentencing the offender for manslaughter, she would have adopted a sentence of seven years imprisonment as a starting point.

[27] The decision of this Court in *R v Katia*; *Ex parte Attorney-General (Qld)*[14] was also considered by the learned sentencing judge. There, an 18 year old offender with no prior convictions, was sentenced to eight years imprisonment for manslaughter and robbery of the victim in what her Honour described as "egregious circumstances". The Attorney-General's appeal against the sentence was dismissed.

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11 [2004] QCA 450.
12 [2015] QCA 138.
13 (Unreported, Supreme Court of Queensland, Holmes CJ, 6 March 2017).
14 [2006] QCA 300.

[28] The learned sentencing judge reasoned to the sentence she imposed in the following way:

> "Balancing those authorities, the view I have formed is that as a starting point, if this was, as Chief Justice Holmes has outlined in that matter, a sentence for manslaughter, I would have begun with a sentence of eight and a-half years' imprisonment. I appreciate the approach that is outlined by the Chief Justice in that decision of *Mayot*. Because of the effect of the legislation in section 314A, that any sentence I impose on you must be accompanied by an order that you serve 80 per cent of it, it is appropriate that there be a reduction to the head sentence because I cannot reflect your guilty plea and the other mitigating circumstances at the other end of the sentence.
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> So I will reflect your relative young age and your early guilty plea and your admissions to the police, your cooperation with the administration of justice, and the remorse that you have shown through your statement to the Court and through your plea, by a reduction of that sentence. And I will also reflect, in a tangible way, a reduction in the sentence reflective of the fact that you have found yourself serving six months of your period in custody in maximum security and the circumstances that that has entailed. I note, in that regard, the decision of Justice Applegarth that I was referred to in *Callanan v Attendee X*,[15] outlining the psychological effects of that. That is a period of six months.
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> Now, acknowledging that the process of sentencing is an integrated one, it is not one involving mathematical certainty, I have determined that all of those matters taken into account will result in a reduction to the head sentence to seven years' imprisonment. I expressly record that, in my albeit integrated process, six months of custody in maximum security, in the circumstances as have been outlined, I have taken into account as part of that reduction by way of a reduction by six months."

[29] After the sentence had been pronounced, the learned sentencing judge was advised that there had been an inadvertent factual error in that the detention in maximum security had already been taken into account by the magistrate who sentenced the respondent for the obstruction offence. Her Honour reopened the sentence hearing. She said that that factor would perhaps have affected the sentence by one or two months. Given that the respondent had just been released from maximum security and would remain in the detention unit for another month, the sentence would not be varied.

The ground of appeal

[30] There is one ground of appeal. It is that the sentence is manifestly inadequate.

Appellant's submissions

[31] The appellant submits that the sentence imposed in this case does not reflect the enormity and seriousness of the offending, the need to give proper weight to

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15 [2013] QSC 340.

deterrence, denunciation and protection of the community, and the applicable maximum penalty.[16] It is therefore inadequate in the sense that it is unreasonable or plainly unjust in terms of the test expounded in *Hili v The Queen*.[17]

[32] A criticism central to the appellant's case is that the learned sentencing judge regarded herself as too tightly bound to sentences in manslaughter cases said to be broadly comparable.[18] To have done so failed to have regard to the creation of the new offence of unlawful striking causing death, an offence specifically designed to target "coward punch" cases.[19]

[33] The new offence has features which distinguish it from manslaughter. It is specific to striking to the head or neck; the availability of accident as an excuse is more limited; the defence of repetition of insult is not available; and although the maximum penalty for both is life imprisonment, for a s 314A offence, in general, an offender against s 314A must serve 80 per cent of the term of imprisonment in actual custody. These features, the appellant submits, signal a legislative intent that stiffer sentences be imposed for a s 314A offence than for manslaughter in order to deter and punish such offences.[20]

[34] The appellant further submits that it was an error for the learned sentencing judge to have adopted a starting point of eight and a half years imprisonment on the basis that it would have been an appropriate starting point for a sentence for manslaughter. To have done so failed to pay due regard to the distinguishing features of an offence against s 314A.

[35] By way of ultimate submission, the appellant contends that the objective circumstances of this offence are precisely those for which the offence was created and that, therefore, the appropriate starting point is a sentence at "a level approaching the maximum of life imprisonment".[21] In oral submissions, senior counsel for the appellant submitted that after allowing for the plea of guilty and the respondent's youth, a sentence of not less than 12 years imprisonment would properly reflect the circumstances of the offending and other factors relevant to sentencing the respondent.[22]

Respondent's submissions

[36] The respondent disputes that the enactment of s 314A evinced a legislative intent that an offence against the provision would attract a greater sentence than an offence of manslaughter committed in comparable circumstances. To the contrary, the respondent submits that the extrinsic material suggests that the intention of legislature was to create a new homicide offence where a person would be criminally liable for an assault causing the death of another in circumstances where the person would not be guilty of manslaughter by operation of s 23(1)(b) of the *Code*.[23] Further, the respondent submits that there is no evident legislative intent that a person

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16 Appellant's Outline of Submissions ("AOS") at [15].
17 (2010) 242 CLR 520; [2010] HCA 45 at [58]-[60].
18 AOS at [19].
19 Ibid at [21].
20 Ibid at [17], [18] and [20].
21 Ibid at [24].
22 Tr1-16 ll24-28.
23 Respondent's Outline of Submissions ("ROS") at [23].

convicted of a s 314A offence should receive a greater sentence than if a person was convicted of manslaughter on the same facts (leaving aside issues concerning the operation of s 23(1)(b)). The respondent argues that the manifest unfairness that would arise were a person who has been convicted of a s 314A offence but would have been not guilty of manslaughter by virtue of s 23(1)(b), to receive more severe punishment than a person who has been convicted of manslaughter because s 23(1)(b) has been negatived, speaks against the implication of such a legislative intent.[24]

[37] It is legitimate, the respondent contends, for a sentencing judge to consider, as one relevant factor, what sentence the offender would have received had he or she been convicted of manslaughter.[25] The fundamental principle of consistency in sentencing requires that.[26]

[38] It is inconsistent with principle, the respondent argues, to view his offending as warranting, as a starting point, a sentence approaching the maximum because the circumstances of his offending were those for which the offence was created. Consistently with principle, a maximum penalty is to be reserved for cases which fall within the worst category of such an offence.[27]

[39] The respondent submits that his sentence is consistent with the sentences imposed in *Mayot* and certain other sentences that were imposed for s 314A offences after the respondent was sentenced.[28] It is also consistent with sentencing decisions of this Court with respect to manslaughter in comparable circumstances. Accordingly, the respondent's sentence is not manifestly inadequate.

Discussion

[40] I propose to deal first with the appellant's proposition that the terms in which s 314A was enacted evince a legislative intent that stiffer penalties be imposed for a s 314A offence than for manslaughter. That is to say, the legislature intended that when the same offending conduct is both a s 314A offence and manslaughter, a sterner sentencing regime is to apply to the former.

[41] I am unable to accept that proposition. Significantly, the Explanatory Notes[29] for the *Safe Night Out Legislation Amendment Bill* 2014 (Qld) do not support it. The Explanatory Notes contain the following statements:[30]

> "The creation of the new offence of unlawful striking causing death is to principally address the 'coward-punch' homicide cases.
>
> Currently, in Queensland, the offences charged in the circumstances of a fatal 'coward-punch' are murder and/or manslaughter. However, in the absence of overt evidence that the offender intended to kill the

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24 Ibid.

25 ROS at [24].

26 *Wong v The Queen* (2001) 207 CLR 584; [2001] HCA 64 per Gleeson CJ at 591.

27 *Venn v The Queen (No 2)* (1987) 164 CLR 465 per Mason CJ, Brennan, Dawson and Toohey JJ at 478.

28 *R v Mischewski* (Unreported, Supreme Court of Queensland, A Lyons SJA, 18 December 2017); *R v Heke* (Unreported, Supreme Court of Queensland, Applegarth J, 23 February 2018); *R v Heather* (Unreported, Supreme Court of Queensland, Douglas J, 8 March 2018).

29 These Notes are extrinsic material for interpretation purposes pursuant to *Acts Interpretation Act* 1954 (Qld) s 14B(3)(e).

30 At 4, 5.

> victim, a conviction of murder is difficult to secure. Further, the operation of section 23(1)(b) of the Criminal Code poses a challenge to securing a conviction for manslaughter in cases involving a 'coward-punch'. Section 23(1)(b) will exempt an accused from criminal responsibility for the consequences of their actions (example, death resulting from a punch), if the consequence was not intended or foreseen by the offender and would not reasonably have been foreseen by an ordinary person.
>
> The new offence will fill a legislative gap and ensure that the community is protected from such cowardly acts of violence. The new offence of unlawful striking causing death precludes an accused from attempting to argue that although the strike was deliberate and wilful, the death of the victim was an 'accident'."

[42] These statements reveal that, as the respondent submits, the legislative intent in enacting s 314A had, as its objective, the filling of a gap whereby an offender who killed another with a coward punch to the head or neck might not be found criminally responsible for murder (because the requisite intent is difficult to prove) or for manslaughter (because the excuse under s 23(1)(b) is difficult to negative). The attainment of that objective was supplemented by the exclusion of lawfulness in repelling repetition of insult and of provocation as a defence.

[43] I do not find within the above statements, or elsewhere in the Explanatory Notes, an intention that a separate sentencing regime which is harsher than that for manslaughter and completely independent of it, is to apply to an offence against s 314A. To the contrary, that provision is focused upon criminal liability. Its enactment reflects a legislative acknowledgement of the now notorious fact that a single strike to the head or neck can be fatal and that appropriate criminal responsibility should attach to it.

[44] Putting aside the Explanatory Notes, I turn to enquire whether from the language of s 314A and the circumstances in which it was enacted, there is a basis for drawing conclusions as to the degree of relevance sentences for manslaughter are intended by the legislature to have for sentencing for an offence against that provision.

[45] First, I would observe that the exclusion of the availability to a person charged under s 314A of certain defences that are open when manslaughter is charged, does not, to my mind, signal an intention that manslaughter sentences are to have no, or a diminished, relevance to sentencing under s 314A. There is no logical reason for supposing that the exclusion was intended to have that consequence.

[46] Next, on the face of it, it might have been thought that the provision in s 314A(5) requiring that the lesser of 80 per cent of the sentence imposed and 15 years be served, indicates that a different sentencing regime, independent of that for manslaughter, is to be established by courts for a s 314A offence. I do not think that that is so for several reasons.

[47] In the first place, the provisions of s 314A(6), particularly those relating to an intensive correction order and suspension of a term of imprisonment, suggests that a wide sentencing regime similar to that for manslaughter is to prevail. Secondly, the same maximum penalty applies for a s 314A offence as for manslaughter. Thirdly, no minimum penalty has been enacted for a s 314A offence. Lastly, the requirement in s 314A(5), by its own operation, imposes an indispensable measure

of severity that does not apply to sentences for manslaughter. It is unlikely, in the absence of an express indication to that effect, that a new and different penalties regime was envisaged for an offence against s 314A that would compound the severity.

[48] It follows, in my view, that sentences for manslaughter have, and are intended to have, a relevance for sentencing under s 314A. At the risk of stating the obvious, it is only manslaughter cases that are factually similar to the s 314A offence at hand that could have a potential relevance in this regard.

[49] A second significant qualification arises from the enactment of the separate s 314A offence. That legislative step reflects an increasing public consciousness of, and concern about, deaths caused by blows to the head or neck. Such consciousness and concern ought themselves be reflected in sentencing for s 314A offences. That consideration necessarily limits the assistance that may be derived from manslaughter sentences which were imposed at a time before the increased public consciousness and concern became manifest.

[50] For these reasons, I consider that, as a matter of principle, subject to these two qualifications, a sentencing judge may have regard to sentences imposed for manslaughter and may seek to derive from them a starting point for sentencing for a s 314A offence.

[51] I now turn to the manner in which the sentence was imposed in this case. For reasons which I shall explain, I consider that a starting point of eight and half years imprisonment was too low. The adoption of it has resulted in a sentence which, in my view, is manifestly inadequate.

[52] The respondent was a member of a group of four individuals who set about intimidating passers-by. They attempted to engage the deceased and his friend, P. The respondent delivered a very forceful blow to the deceased's jaw with a clenched fist. The blow was entirely unprovoked. The deceased had his arms by his side. He had said nothing to the respondent or his associates. Moreover, the blow was delivered from out of the deceased's sight. The deceased had no opportunity to defend himself. It is no understatement to say that this is a chilling example of the cowardly, vicious conduct that s 314A was intended to address.

[53] The circumstances in which the fatal blow was delivered here are, in my view, more egregious than those in *George* and *Skondin*, to which the learned sentencing judge referred. In *George*, after a drunken brawl outside a hotel, the offender walked towards the victim who was leaning on the tailgate of a utility. He delivered a single punch to the facial area of the victim whose ability to defend himself was impaired by injuries he had received in the brawl. The blow was "brazen" because it was inflicted after the police had intervened. The violence was protracted because, after the blow was inflicted, the offender started a fight with others and had to be restrained.

[54] The offending in *George* did not exhibit the cowardly aspects of the respondent's offending. There was the antecedent menacing of the deceased and P by the group of four individuals. But, most significantly, there was a "king hit" to the deceased's jaw to which he was blind and hence unable to defend himself. As well, the decision predates the enactment of s 314A by more than a decade.

[55] The decision of this Court in *Skondin* is much more recent. The offender had been sentenced to 10 years imprisonment with a serious violent offence declaration. A sentence of nine years imprisonment without a serious violent offence declaration was substituted. In that case, the offender was sentenced after a trial. He struck the victim in an argument in a supermarket. The contrast of that offending with the offending of the respondent is evident from the description given by Holmes JA (with whom Atkinson J agreed). Her Honour said that the offence "entailed only a single blow of, at most, moderate force delivered with the non-dominant hand."[31] It was not suggested that the victim was blind to it.

[56] As to the other sentencing decisions to which the learned sentencing judge referred, *Mayot* was correctly regarded by her Honour as not involving comparable circumstances of offending. In *Katia*, which preceded the enactment of s 314A by about a decade, both the offender and his victim had been drinking heavily at nearby hotels in the city. In the early morning, the offender accosted the victim. He admitted that he threw a punch at him which caused the victim to fall backwards and then stole his watch. The punch, which was quite out of character for the offender, caused a fatal vertebral artery rupture. The likely cause of the rupture was a blow behind the victim's left ear. The bruising in that area was described as "modest". The victim's inebriated state also contributed to the fatality. By comparison, the respondent's powerful covert punch was very considerably worse.

[57] Having regard to these sentencing decisions and allowing for the qualifications to which I have referred, I consider that a sentence of the order 11 to 12 years imprisonment is an appropriate starting point for the reprehensible offending in this case. Making allowance for the respondent's youth, his plea of guilty and the fact that he spent time in maximum security, the sentence I would impose is one of nine years and six months imprisonment.

Disposition

[58] Consistently with these reasons, I would allow the appeal. The sentence should be set aside and the respondent resentenced to a term of nine years and six months imprisonment. He must serve 80 per cent of this term before he is released. The declaration with respect to time served should not be altered.

Orders

[59] I would propose the following orders:

1. Allow the appeal.

2. Set aside the sentence imposed at first instance and in lieu thereof, order that the respondent be imprisoned for a term of nine years and six months.

3. Further order that the respondent must not be released from imprisonment until he has served 80 per cent of this term.

4. Declare that the pre-sentence custody from 3 January 2016 to 12 October 2017 is time served under this sentence.

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31 At [83].

[60] **PHILIPPIDES JA:** I agree with the reasons given by Gotterson JA and with the orders proposed by his Honour.

[61] **HENRY J:** I have read the reasons of Gotterson JA. I agree with those reasons and the orders proposed.